

ENVIRONMENTAL PROTECTION COMMISSION
MINUTES
GENERAL MEETING AND PUBLIC HEARING
OCTOBER 1, 2003

At the conclusion of a joint public hearing with the Zoning Board of Appeals (held in Room 206), the Environment Protection Commission called the October 1, 2003 meeting to order at 9:30 p.m. in Room 119 of the Darien Town Hall.

Commission Members Present: Peter Hillman, Susan Cameron, Robert Kenyon and Nina Miller

Staff Present: Nancy Sarner

Old Business:

Chairman Hillman read the following agenda item:

EPC-79-2003, Robert & Elaine Hay, 121 Leroy Avenue, proposing the installation of a drainage pipe through wetlands to connect to an existing catch basin and perform related site development activities within a regulated area. The property is located on the west side of Leroy Avenue directly west of the intersection of Partridge Lane and Leroy Avenue, shown on Tax Assessor's Map #18 as Lot #49.

No one was present to discuss the Hays' application and address questions from the Commission.

Upon discussion, the following motion was made: That the Commission deny without prejudice Wetland Permit Application #EPC-79-2003 due to a finding of insufficient evidence. The motion was made by Mr. Hillman, seconded by Ms. Miller, and unanimously adopted.

Ms. Sarner announced that the Kelly's requested a postponement of their application, #EPC-91-2003, 103 Pembroke Road, proposing a three-car garage and stonewalls, and perform related site development activity within a regulated area.

New Business:

Ms. Sarner announced that Ms. Metzger's representative, Atty. Wilder Gleason, requested a postponement of #EPC-90-2003, 36 Ox Ridge Lane, and granted an extension for Commission review.

Chairman Hillman read the following agenda item:

EPC-92-2003, James & Lori Vincent, c/o Flanagans, 79 Stephen Mather Road, proposing an addition, reconfiguration of an existing driveway, installation of new septic system and well, new fence and stonewall, wetland restoration, and perform related site development activities. The property is located on the north side of Stephen Mather Road north of the intersection of Pilgrim Road and Stephen Mather Road, shown on Tax Assessor's Map #1 as Lot #49.

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Michael Fishman of Stearns & Wheler, LLC, presented the application on behalf of Mr. and Mrs. Vincent. Mr. Hillman thanked Mr. Fishman for his patience regarding the rescheduling of the application from an earlier meeting date.

Mr. Fishman reviewed existing site conditions. He noted the following features in particular: The wetland area, which is located on the eastern portion of the property, is partially lawn and partially wooded. Most of the front yard consists of Pachysandra. The existing driveway is located on along the western side of property and has a difficult sight line. Ms. Miller agreed that the sight line was bad.

Mr. Fishman explained that the driveway had been originally proposed to be located across from Pilgrim Road. He said the Vincents ruled out this version, because they did not want headlights from Pilgrim Road to shine directly at their house after the loss of trees. Mr. Fishman explained that the driveway had been shifted to the west to address this concern, and that the turnaround area had been reduced. He said that these changes cut the proposed area of impervious surface within the regulated area in half.

Mr. Fishman reported that the porch would be constructed from wood planks and set on piers. Rear additions to the existing residence would be constructed outside the regulated areas. He said that the existing septic tank located within the wetlands would be abandoned and replaced outside the regulated area. He said that after construction, there would be a slight increase in runoff, which would be addressed with proposed detention system to be located outside regulated areas in the backyard.

Mr. Fishman stated that the application proposes a wetland planting plan, shown on Figure 2, Proposed Conditions. He said that the plan incorporated Pachysandra because of their dense root system and low maintenance, and it tends to do better than Myrtle in the shade. Ms. Cameron noted that the Pachysandra do not like drought. Mr. Fishman said that the plant is a borderline succulent.

Ms. Miller asked if the septic tank would have a pump to connect to the leaching fields. Mr. Fishman replied that the septic system would have a pump chamber to pump from the tank around the house to the leaching fields.

Ms. Cameron asked if the proposed porch would be located within the wetlands. Mr. Fishman said that it would be located 30 feet from the wetlands at its closest point.

Mr. Hillman asked Mr. Fishman to summarize the proposed activities to be located within 25 feet of wetlands. Mr. Fishman replied that the plantings and wetland enhancement would be within 25 feet of the wetlands. He said that they would replace Pachysandra in the front yard with lawn, and replant the Pachysandra as a wetlands buffer. He said that the closest proposed construction would be 29 feet, the driveway would be 32 feet and stonewall would be 43 feet from the wetlands, respectively.

Ms. Miller asked why silt fence had not been proposed around the northern edge of the wetlands. Mr. Fishman stated that the sediment and erosion control plan still has the originally proposed driveway. He explained that they propose the use of hay bales and silt fence on the east side of

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the wetlands enhancement to protect the natural, untouched wetlands; and that, once the plantings are established, silt fencing would be installed around the western and northern wetlands boundary.

Ms. Cameron asked Mr. Fishman why the porch addition had been proposed for the front of the existing residence. Mr. Fishman stated that the porch was designed for circulation and outdoor entertainment space. He reiterated that the porch would be set on piers and be constructed of wood planks, and that, although the porch would allow water to percolate into the ground, it was calculated as an impervious surface for runoff calculations. Ms. Miller asked about the existing footbridge. Mr. Fishman replied that it had been installed at a low, damp point.

Ms. Cameron asked Mr. Fishman to explain why the wetland area was not found to contain a vernal pool. Mr. Fishman replied that although the manmade outlet could be considered a vernal pool outlet, changes in hydrology prevent hydrologic prevent the support of vernal pool species. He added that the culvert was probably installed to maintain drainage when the road was constructed.

Ms. Miller asked when the work would start. Mr. Fishman replied that it would begin as soon as possible.

Mr. Hillman asked who the Flanagans are that are mentioned on the permit application. Mr. Fishman replied that they are Mrs. Vincent's parents, with whom the Vincents stay with when they are in the area. Mr. Fishman reported that Mrs. Vincent spoke with a neighbor across the street but did not have a letter.

Ms. Cameron asked if the driveway could be constructed with pavers. Mr. Fishman said he had discussed the use of pavers with the owners. Ms. Cameron recommended the pavers to be used with gravel. Mr. Kenyon expressed concern that the gravel would be pushed into the lawn area when the driveway is plowed.

Ms. Miller asked Mr. Fishman about notations on the plan. Mr. Fishman replied that the symbols regarding test pits for the septic system have been abbreviated as "DP" for deep pit tests and "PT" as percolation tests.

Mr. Hillman asked why two porches (a back and front) were needed. Mr. Fishman replied that the existing rear porch would be replaced with house space, and that the small rear porch and larger front porch were proposed to create outdoor space. Ms. Cameron and Mr. Hillman expressed concern that the front porch would be substantially within the regulated area. Mr. Fishman replied that it would be and asked the members to consider that the house is within the setback area. Ms. Cameron recommended that more outdoor space be created in the rear yard outside regulated area. Mr. Fishman stated that new construction could not be placed over the proposed detention system and must be kept a certain distance from the leaching fields. He said that he was not sure where the exits and entrances for the house are located. Mr. Kenyon said that the use piers, rather than foundation, would pose less impact. Mr. Fishman agreed, and noted that the porch would be constructed of wooden slates.

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Mr. Kenyon stated that, if approved, stipulations should be made. Ms. Miller recommended that a performance bond be required for the extensive wetland enhancement work proposed. Ms. Cameron agreed and recommended that the bond in the amount of \$5,000 be held for two growing seasons, with half returned at the end of the first growing season.

Upon further discussion and review of the plans and materials presented, the following motion was made: That the Commission approve with conditions Wetlands Permit Application #EPC-92-2003. The application is approved with the stipulation that a performance bond in the amount of \$5,000 shall be posted with the Planning and Zoning Office and held for two growing seasons to ensure that the wetland planting plan is completed according to the approved plan. Half of the amount shall be returned after the first growing season, or one year after the planting is completed and cared for. The remaining amount shall be returned at the end of the second growing seasons to ensure that the new plantings are established. Any diseased or dead plantings must be replaced. The work is approved as shown on the plan entitled "Figure 2, Proposed Conditions – Vincent Residence, 79 Stephen Mather Road, Darien, Connecticut" by Stearns & Wheler, LLC, dated 8/03, revised 9/03, and received by the Planning and Zoning Office on September 25, 2003. The motion was made by Mr. Kenyon, seconded by Mr. Hillman, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-94-2003, Gerald & Angela Bothwell, 15 Waterbury Lane, proposing construction of an new single-family residence and related appurtenances, reconstruction and extension of an existing stonewall, and perform related site development activities. The property is located on the west side of Waterbury Lane approximately 650 feet north of the intersection of Waterbury Lane and Greenleaf Avenue, shown on Tax Assessor's Map #28 as Lot #4-C.

Attorney Robert Maslan of Rucci, Burnham, Carta & Edelberg, LLP, presented the application on behalf of the Bothwells. Mr. Bothwell was present to address questions from the Commission. Atty. Maslan explained that the property was approved as part of a 1979 subdivision for Greenleaf Avenue, a.k.a. Bumpalong Lane [SUB-529A and EPC-8-1979]. Mr. Hillman confirmed that a 25-foot setback would be used for the review of the application, which was the standard at the time of the 1979 subdivision. Atty. Maslan explained that the subdivision was litigated in 1984, resulting in a stipulated judgment for lot boundaries and acceptable building envelopes. He said the approved subdivision map had been filed on the Darien Land Records as Map #4308. He stated that the subdivision underwent environmental analyses. He reviewed Table 2, which showed the zoning location survey depicting approved building envelope from subdivision. Atty. Maslan reported that the subdivision lots have been developed from Bumpalong north to Hoyt Street. He reviewed site photographs, including images of the stonewall and berm, and explained that the subject lot had been cleared years ago but has since become overgrown. He explained that the stonewall is mostly 25 feet from the wetlands boundary, is in good condition, and is 5 to 6 feet wide in some areas. He said that it is no question that the stonewall would serve as a barrier.

Atty. Maslan explained that the house is proposed in close to the wall, but would be maintained within the building envelope from the subdivision and judgment. He said that the subject lot, Lot #4, was included within the subdivision drainage analyses.

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Mr. Hillman asked Mr. Bothwell if the subject lot is taxed as a building lot. Mr. Bothwell replied that it is.

Atty. Maslan reported that they tried to push the house further away from the stonewall by seeking approval from the Planning and Zoning Commission to adjust the arc of the cul de sac, hoping to push the front yard line closer to Waterbury Lane, but were denied.

Ms. Cameron asked if the owners would be able to walk and set up a ladder between wall and house. Mr. Bothwell said the residence would be 5 feet from the wall, allowing room for walking and setting up a ladder. He said that the wall is irregular because some areas have fallen down. Atty. Maslan said that in that area near the house, the wall is in good shape, and that it would not be convenient to climb the wall and create a footpath within the wetlands. Ms. Cameron said that there should be sufficient room to get around the house, otherwise a future owner may move the wall or reduce its width. She said that if Mr. Bothwell states the residence would be 5 feet from the stonewall, she would rely on his testimony. Mr. Bothwell said the distance between the house and stonewall would actually range between 4 to 5 feet, because the wall varies.

Mr. Hillman noted that there would be very little intrusion within the regulated 25-foot area, and that the drainage calculations were conducted as part of the application for the original subdivision approval. He asked Atty. Maslan how the proposed runoff compares with the previous drainage estimates, and if there would be a need for additional infiltrators. Atty. Maslan said that the subdivision included drainage provisions by establishing the series of detention basins through the wetlands area. He said that the proposed development complies with 20 percent zoning requirement, and that the catch basin in the cul de sac, shown on the survey, connects to subdivision approved drainage. Mr. Hillman asked Atty. Maslan if he had figures for the approved drainage calculations. Atty. Maslan replied that the drainage studies were run based upon the subdivision as a whole, and the drainage system was designed to accommodate 100- and 50-year storms, on a project-wide basis.

Mr. Hillman said that he was wondering if a separate report was needed for the subject lot because of potential increase in anticipated impact, since development has changed from 20 years ago. Atty. Maslan said that the berm is part of the stormwater control, and would address drainage from the property.

Ms. Sarnier asked if there was a breakdown available regarding the amount of drainage runoff anticipated from each site from the 1979 subdivision, and expressed concern that larger homes with greater areas of surrounding impervious surface are constructed today as compared with 20 years ago. Atty. Maslan replied that he did not have those figures, but stated that the detention structures were designed to accommodate all the lots of the subdivision. He said that reviewing the subject lot separately would be out of context. Mr. Hillman noted that the plans state that the approved drainage would not be modified, and asked if that was feasible because the system is so good. Atty. Maslan replied that the system was designed to accommodate the fully developed subdivision.

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Ms. Cameron noted that the July 16, 2003 plan by Zimmerman Architects shows the house located 2 inches to 1 foot from the stonewall. Mr. Bothwell explained that the proposed residence had been staked in the field and would be 3 to 5 feet from the stonewall. Ms. Cameron asked if any of the pipes for discharging of the roof leaders would be installed within the 25-foot setback. Mr. Bothwell replied that none would be. He said that they would be tied into the 15-inch pipe, which discharges to the wetland area. He said that the weirs in the berm allow for the slow release of the stormwater to downstream areas. Ms. Cameron expressed concern that the significant amount of runoff from the roof area would exceed the capacity of the weirs. Atty. Maslan affirmed that the system would not be exceeded.

Atty. Maslan said that the drainage work was bonded and had to be completed within a year of subdivision approval. He said that the owners were not seeking changes to the approved subdivision plan. Mr. Hillman summarized that the Commission cannot expand the setback or reopen the review of the previously approved drainage system. Atty. Maslan said that regulations could have been more lenient in 1979, but the Commission cannot change the standards to meet today's. He said that the worse case-scenario would be based on 50- and 100-year storms. He said that the approved building envelope had been defined by the wetland setback, not by zoning setback. Mr. Hillman stated that the application represents a unique situation and that he feels satisfied the application proposes a minimum intrusion upon the 25-foot setback, and that the Commission cannot change the approved subdivision lot to meet today's standards.

Mr. Hillman and Ms. Miller recommended that the stonewall be maintained. Mr. Bothwell stated that if he needed to rebuild the wall, he would confer with Mr. Keating, Wetlands & Zoning Enforcement Officer, and survey stakes in place.

Upon further review and discussion of the plans and materials presented, the following motion was made: That the Commission approve the application, as submitted. The work is to conform to the plans entitled "Map Showing Property Owned by F. Gerald Bothwell & Angela Bothwell, Darien, Connecticut" by Moody & O'Brien, LLC, dated July 11, 2003, and "Site Plan, Waterbury Lane, Lot 8 (Bothwell)" by Zimmerman Architects, dated July 16, 2003. The motion was made by Mr. Hillman, seconded by Ms. Miller, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-98-2003, Amy & Cecil Wade, 315 Middlesex Road, proposing the demolition of an existing garage and perform related site development activities within a regulated area. The relocated garage is proposed outside the 50-foot regulated wetland setback, and therefore does not require wetland permit approval. The property is located on the western side of Middlesex Avenue approximately 200 feet southwest of the intersection of Middlesex Avenue and Leroy Avenue, shown on Tax Assessor's Map #9 as Lot #73.

Howard Patterson of Patterson-Bigosinski Architects presented the application to the Commission. Mr. Patterson explained that the application proposed the demolition of a barn, which serves as a garage. A new garage would be relocated and attached to the residence. The proposed regulated activity is limited to the demolition of the barn. Mr. Patterson said that the

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footings of the barn may be kept, but would be cut down to below grade and the area would be converted to lawn.

Upon further discussion and review of the materials and plans presented, the following motion was made: That the Commission approve Wetlands Permit Application #EPC-98-2003, as submitted. The work activity shall conform to the plan entitled "Improvement Location Survey, Prepared for Cecil Wade & Amy Wade, 315 Middlesex Road, Darien, Connecticut" by William W. Seymour & Associates, dated January 21, 2001, last revised July 29, 2003. The motion was made by Ms. Cameron, seconded by Mr. Hillman and unanimously approved.

Chairman Hillman read the following agenda item:

Confirmation of Wetland Boundary Determination from EPC-20-2002, Christopher & Margaret Stefanoni, 77 Nearwater Lane.

Mr. Stefanoni was present to discuss his request with the Commission. The Commission reviewed the reports of the March 11, 2002 by Professional Soil Scientist Otto Theall, and the May 15, 2000 and March 1, 2002 soils reports by Professional Wetland and Soil Scientist Thomas Pietras, regarding the soil types on adjacent to the Stefanoni property, and a small watercourse located south of the property.

Upon discussion, a motion was made to adopt the following finding:

The Commission confirms the prior determination made under Wetlands Approval #EPC-20-2002 that there are no report of any inland wetlands on or in proximity to the property at 77 Nearwater Lane. Therefore, there are no wetland soils on or adjacent to the subject property that fall under the jurisdiction of the Inland Wetlands and Watercourses Regulations of the Town of Darien.

The motion was made by Mr. Hillman, seconded by Ms. Miller and unanimously approved.

Wetlands Permit Applications #EPC-95-2003, Gerald A. & Joanne T. Nielsen, 34 Delafield Island Road, and #EPC-96-2003, Thomas & Sophie Murphy, 10 Sylvan Road were rescheduled to the special meeting of October 23, 2003.

Chairman Hillman read the following agenda item:

EPC-97-2003, Mary Ferrara & Anne Chiapetta, 504 Mansfield Avenue, proposing the refurbishing of an existing inground pool, including the replacement of existing pool equipment with updated equipment and replacement of the pool terrace with a larger terrace, installation of a 4' to 6' pool fence, and perform related site development activities. The project is located on the west side of Mansfield Avenue approximately 190 feet south of the intersection of Mansfield Avenue and Stephen Mather Road, shown on Tax Assessor's Map #1 as Lot #115.

Ms. Sarnier spoke directly to Ms. Ferrara and Ms. Chiapetta regarding an existing violation regarding unauthorized stockpiling activity within the regulated area that threatened trees to be preserved, and stressed that Mr. Keating, Zoning/Wetlands Enforcement Officer, to determine

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compliance with existing approvals, must review any changes prior to implementation. Ms. Sarner warned that further violations would cause the issuance of a Cease and Desist Order for the project site.

Michael Fishman of Stearns & Wheler, LLC presented the application to the Commission. Mr. Fishman explained that the proposed plan proposes a decrease in the terrace area, therefore there would be a decrease in footprint area.

Mr. Hillman asked for a "sixty second" summary. Mr. Fishman replied by summarizing projects approved under Wetlands Permit Approvals #EPC-45-2001, #EPC-36-2003 and #EPC-37-2003.

Mr. Fishman explained the various steps required for the refurbishing of the pool, which would be conducted within its existing footprint. He said that there is no chemicals in the existing pool water, which would be pumped out over a tarp to allow for some percolation and settling out of sediments before the flow reaches the silt fence and wetlands. The pool would be sandblasted. Debris from the sandblasting operation would be contained within the pool, and collected and disposed of at an appropriate offsite disposal facility. Two new skimmer units and main drain would be installed, and the existing fill pipe would be relocated. The pool would be plastered, and equipped with new lights, diatomaceous earth filter and heater.

Mr. Fishman explained that the pool terrace would be replaced. He said that 3-foot curved enlargements would be added to the north and south sides of the pool. He explained that the bump outs were necessary because, it is best if there is a minimum of 4 feet for patio/terrace area around a pool to allow for ease of access, but the existing areas are only 2 feet wide. He said they compensated for the new areas by reducing terrace behind the house. Mr. Fishman stated that the application included an extensive, detailed planting plan. He noted that the plan depicts previously approved plantings as well as the newly proposed mitigation plantings.

Mr. Hillman asked if they considered an automated pool cover. Ms. Chiapetta replied that it would be cost prohibitive at this point, but had considered it because it would have eliminated the need for a fence.

Mr. Hillman recommended that a performance bond be posted for the proposed mitigation-planting plan, to be held for two growing seasons.

Upon further review of the materials and plans presented, the following motion was made: That the Commission approve with stipulations Wetlands Permit Application #EPC-97-2003. The application is approved with the stipulation that a performance bond in the amount of seven thousand five hundred dollars (\$7,500) shall be posted with the Planning and Zoning Office to ensure compliance with this approval. Two thousand five hundred dollars (\$2,500) shall be posted to ensure that the wetlands are not disturbed during the pool refurbishment. This amount may be returned upon the satisfactory completion of the pool work. Five thousand dollars (\$5,000) shall be posted to ensure the implementation of the mitigation-planting plan. Half of the amount shall be returned after the first growing season, or one year after the planting is completed, to ensure that the planting plan is implemented and that the plantings are cared for. The remaining amount shall be returned at the end of the second growing season to ensure that

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the new plantings are established. Any diseased or dead plantings must be replaced. The motion was made by Mr. Hillman, seconded by Ms. Cameron, and unanimously approved.

Chairman Hillman read the following agenda item:

Amendment of EPC-83-2001, Darien Sewer Commission, Long Neck Point & Pear Tree Point Road, requesting a plan modification to cross the Ring's End Bridge with a sewer extension in lieu of crossing under the riverbed, via directional boring. The project area is located within town-owned property and the right-of-ways Ring's End Road, shown on Tax Assessor's Maps #

Mr. Fishman was present on behalf of the Darien Sewer Commission. Upon discussion, the Commission decided that the proposed amendment request should be scheduled for a Public Hearing for the November 5, 2003 meeting.

Chairman Hillman read the following agenda item:

Discussion of EPC-98-2001, Richard O'Hare, 45 Brookside Road, regarding a violation due to activity within a conservation easement area and failure to undertake required revegetation of conservation easement area. The property is located at the northeast corner of Prospect Avenue and Brookside Road, shown on Tax Assessor's Map #15 as Lot #17.

Attorney Christoffel Krediet was present on behalf of Mr. and Mrs. O'Hare. He explained that he was recently brought in to work on the case, and that he was present to report on the status of 45 Brookside Road. Atty. Krediet reviewed Darien Land Record Map #4736, which delineates the Conservation Easement Area. He explained that a permit was granted in 2001 for the enhancement of the area. He said that the O'Hares did undertake some of the approved work activity. He reviewed the August 11, 2003 letter from David Keating, Wetlands Enforcement Officer, and reported that the play equipment has been removed, and the lawn has not been mowed.

He said he has been in contact with Don Ferlow. He said that the O'Hares hope to become compliant as quickly as possible, and have begun by removing the sand box and rope swing. He said that the baby swing is still in place because it is bolted in tree and therefore needs to be removed by a tree specialist.

Ms. Sarner reported that, although the work approved under Wetlands Permit Approval #EPC-98-2001 was started, it was not completed. Specifically, the invasive vegetation was removed, but the approved wet meadow area had not been established.

Ms. Cameron recommended that the easement boundary be surveyed. Ms. Sarner reviewed the demarcation of the easement. Ms. Cameron stated that she was not sure if a seed mix was appropriate for the area, and recommended installation of shrubs.

Ms. Sarner said that the EPC could consider requesting a bond tonight and the immediate surveying of the easement area. Ms. Cameron stated that they would need the area surveyed before the November 5th meeting, as well as a modified plan. Mr. Hillman said that they would

take on good faith that there would be no delay in having area surveyed, and that they would expect a bond and revised plan.

Atty. Krediet said he hoped to show that there is dialogue between the Commission and the O'Hares, and suggested the planting of some Willow trees and overseeding of the grass area within the easement.

Ms. Cameron said that the boundary of the Conservation Easement Area needs to be defined with a split rail or staggered boulders. Mr. Kenyon stated that this is a willful violation of the easement and that the O'Hares must act now. The Commission asked that Atty. Krediet advise the O'Hares regarding the discussion and findings from the meeting.

Upon further discussion, the Commission decided that the discussion shall be continued to the November 5, 2003 meeting. They advised the O'Hares, through their representative, Atty. Krediet, to take the following actions in preparation for that meeting. [Plans and materials must be provided to allow the Commission adequate time to review the plan prior to the November 5th meeting.]:

1. Cease immediately all vegetation alterations within the conservation easement area. This includes mowing, weed whipping, and herbicide and fertilizer application.
2. Obtain the services of a licensed land surveyor to stake or otherwise mark on the subject property the boundaries of the Conservation Easement Area, within two weeks.
3. Prepare a wetland and conservation easement restoration/replanting plan, prepared by a wetland scientist, environmental consultant, or qualified landscape professional. The restoration plan shall convert the "meadow"/lawn easement area to a more natural, low maintenance shrub and woodlands. The plan shall include the demarcation of the conservation easement boundary. Please note that the demarcation of the boundary is stipulated under the Conservation Easement filed on the Town Land Records (Volume 941, Pages 316 to 320). The Commission will consider the use of a split rail fence or other permanent marker(s) in lieu of the boulders discussed on Page 317 of the Conservation Easement. The demarcation can be informal, such as a split rail fence with periodic breaks, or the staggered placement of the boulder as opposed to a stonewall, and must be intermixed or lined with trees and/or shrubs. The plan shall also include a comprehensive planting list detailing the number, type and size of plant species proposed.
4. Prepare a comprehensive project narrative describing the type of activity associated with the restoration of the conservation easement and the maintenance of the plantings, including site access, type of equipment to be used, and work sequence.
5. Prepare an estimate of plant and labor costs associated with the restoration/replanting plan. This estimate shall be used to determine the amount of a performance bond to be posted with the Planning and Zoning Office to ensure that the restoration/replanting plan is completed according to Commission requirements, and shall be held for three growing seasons to ensure that new plantings are established and the area is allowed to convert to a more natural condition.
6. Arrange for the baby swing to be removed prior to the November 5, 2003 meeting.

The discussion was continued to the November 5, 2003 meeting.

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Chairman Hillman read the following agenda item:

Review of Wetland Restoration, EPC-68-2003, Michael & Eleanor Devlin, 3 Waterbury Lane:

The Commission discussed the wetland restoration conducted at 3 Waterbury Lane. As the seed mix has been satisfactorily applied, the restoration has been deemed complete.

Chairman Hillman read the following agenda item:

Discussion and Possible Decision of EPC-76-2003, David & Sabina Harris, 1749 Boston Post Road, proposing a three lot subdivision, construction of a stormwater retention structure and associated piping, and perform related site development activities within a regulated area. The property is located on the north side of the Boston Post Road approximately 555 feet southwest of the intersection of Renshaw Road and Boston Post Road, shown on Tax Assessor's Map #41 as Lots #5 & 6.

The Commission reviewed and deliberated the application's proposal for a three-lot subdivision at 1749 Boston Post Road. Upon discussion and due consideration of the application record, the following findings and resolution were made:

TOWN OF DARIEN
ENVIRONMENTAL PROTECTION COMMISSION
PERMIT TO CONDUCT A REGULATED ACTIVITY

EFFECTIVE DATE: OCTOBER 1, 2003
EXPIRATION DATE: OCTOBER 1, 2008

Application Number: EPC-76-2003

Applicants' Name and Address: David & Sabina Harris
1749 Boston Post Road
Darien, CT 06820

Property Address of Proposed Activity: 1749 Boston Post Road
Darien, CT 06820

Name and Address of Applicants' Representative: William W. Seymour & Associates
170 Noroton Avenue
Darien, CT 06820

Proposed Activity: Three lot subdivision, construction of a stormwater retention structure and associated piping, removal of invasive species and installation of wetland plantings, and perform related site development activities within a regulated area.

Shown on Tax Assessor's Map #41 as Lots #5 and #6.

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The Environmental Protection Commission has considered the application with due regard to the matters enumerated in Section 21a-41 of the Connecticut General Statutes as amended and in accordance with Section 10 of the Inland Wetlands and Watercourse Regulations of the Town of Darien, and has found that the proposed work is in conformance with the purposes and provisions of said sections.

This authorization refers to the application to conduct regulated activities within and adjacent to inland wetlands and a waterway within the Town of Darien. The Commission has conducted its review and findings on the bases that:

- In issuing this permit, the Commission has relied on the applicants' assurances, and makes no warranties and assumes no liability as to the structural integrity of the design or any structures, nor to the engineering feasibility or efficacy of such design.
- In evaluating this application, the Environmental Protection Commission has relied on information provided by the applicants. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, after interested parties have had an opportunity to be heard at a duly noticed Public Hearing this permit shall be modified, suspended or revoked by the Commission.

The Environmental Protection Commission met for a general meeting on August 6, 2003 and moved that the application be scheduled for a Public Hearing. The Public Hearing was held on September 3, 2003 and September 17, 2003. The Commission opened the hearing on September 3, 2003 and tabled the application without discussion until the next hearing. During the Commission's September 17, 2003 hearing, the applicants' representatives presented information explaining the project and provided answers to concerns and questions raised by the Commission and Commission staff. No one from the general public participated in the Public Hearing, although invited to do so by the Commission.

Following careful review of the submitted application materials and related analysis, the Commission, all of whose members that participated in the deliberation are fully familiar with the site and its surroundings, finds:

A. PROJECT DESCRIPTION:

The application proposes the subdivision of two lots to create three separate building lots. The regulated activities proposed by the application are associated with the installation of an engineered outlet structure at the outlet of the northern wetland area. The structure would serve as a flood control to handle stormwater overflow from the wetlands area, which currently causes sheet flow from the wetland into the lot area.

B. SITE DESCRIPTION:

The subject property consists of two existing tax lots totaling ± 2.0 acres. The lots contain two residences, one in the northern portion of the lots and one in the southwestern portion of the lot. The parcels are surrounded by stonewalls. The land cover consists of a mixture of

wetlands vegetation, wooded areas with large, mature hardwoods and pines, lawn and brush. Significant trees include 60" and 24" Maples and 24" Spruce to the rear of the southern house, two 48" Tulip Trees and a 30" Beech along the Boston Post Road, and 28" and 26" Spruces, 24" Maple, and 24" and 30" Willows to the rear of the northern residence.

The wetlands were flagged on the property November 20, 2002 by Thomas Pietras of Soil Science and Environmental Services. The flagging is consistent with and closely matches the boundary shown on the Town's wetland boundary map. A wetland pocket is located in the northwest corner of the property, and contains an intermittent watercourse. A newly delineated small wetland area is located in the southeast corner of the lot, near the property boundary. The wetland soils consist of Aquents (Aq) and Leicester fine sandy loam (Lc). Aquents soils are poorly to very poorly drained disturbed soils where two or more feet of the original soils surface has been filled over or excavated. Aquents are characterized by a seasonal to prolonged high groundwater table and either support or are capable of supporting wetlands vegetation. Leicester soils are poorly drained, moderately coarse textured, friable glacial till soil.

C. HEARING PRESENTATIONS AND RECORD:

The applicants' representatives provided materials to the EPC as part of the record in this matter. These materials were presented and discussed during the General Meeting of August 6, 2003 and Public Hearing of September 17, 2003, and discussed during the Commission's deliberation on October 1, 2003:

1. Proposed Plans:
 - a. "Property Survey & Topographic Survey for Subdivision, Prepared for David Harris & Sabina Harris, 1749 Boston Post Road, Darien, Connecticut" by William W. Seymour & Associates, dated October 4, 2002, revised June 11, 2003.
 - b. "Subdivision Site Plan, Prepared for David Harris & Sabina Harris, 1749 Boston Post Road, Darien, Connecticut," Sheets 1 to 2, by John R. Martucci, P.E., dated July 14, 2003.
2. Soil Report – "Soil Report: Harris Property, 1749 Boston Post Road, Darien, CT" by Soil Science and Environmental Services, Inc., dated November 20, 2002.
3. Planting Plan – "Environmental Planting Plan, 1749 Boston Post Road, Darien, CT," Sheets 1 to 2, by Environmental Land Solutions, LLC, dated August 26, 2003.
4. Drainage Report – "Drainage Report, Harris Subdivision, 1749 Post Road, Darien, Connecticut" by John R. Martucci, P.E.
5. Narrative – "Harris Residence – Narrative – 1749 Boston Post Road" by William W. Seymour & Associates, received by the Planning and Zoning Office on July 28, 2003.
6. Site Photographs:
 - a. "View at South Edge of Proposed Retention Area"

- b. "Northwest View at Rear Residence"
 - c. "View South Towards Wetland Area"
 - d. "View in Wetland Area"
 - e. "View South Showing Runoff over Driveway"
 - f. "View North at Rear House"
 - g. "View East Towards Post Road"
 - h. "View East at Rear of Main House to Post Road"
 - i. "View North from Front of Main House"
 - j. "View Northwest Front of Main House"
 - k. "View Southeast at North Side of Main House"
 - l. "Pump Station"
 - m. "24" Outflow at Stony Brook"
 - n. "View Northeast at Boston Post Road to Stony Brook Bridge"
 - o. "View North at Small Wetland Pocket"
 - p. "Wetland Flag #16"
 - q. "View East Towards Small Wetlands Pocket"
 - r. "View Southwest Boston Post Road"
 - s. "View Northeast Towards Pump Station"
 - t. "View Northwest Towards Rear House"
7. Letter to Jeffrey McDougal, William W. Seymour & Associates, from Nancy H. Sarner, GIS Specialist/Planner, dated July 21, 2003, Re: Wetlands Permit Application #EPC-76-2003, David & Sabina Harris, 1749 Boston Post Road.
8. Letter to the Environmental Protection Commission from Jeffrey McDougal, William W. Seymour & Associates, dated August 28, 2003, Re: Harris – 1749 Boston Post Road – Subdivision Application.

D. ITEMS/ISSUES OF CONCERN TO THE COMMISSION:

1. Impact to Drainage

The Commission reviewed the July 14, 2003 report and heard testimony from the applicants' engineer, John Martucci, P.E. Based upon Mr. Martucci's recommendations, the application proposes the installation of an engineered outlet structure at the outlet of the northern wetland area as flood control. The proposed structure would be comprised of a 24" headwall, three 12" H.D.P.E. pipes and a catch basin. The headwall would provide 12" of freeboard over the peak water surface elevation of 17', and the 12" pipes would limit the depth of the pond to 12" deep for a 25-year storm. The catch basin would serve as an emergency spillway in the event that the pipe becomes restricted during a storm.

In carrying out its duties, the Commission has taken into consideration the standards established under the regulations, and has considered the concerns expressed by its members. The Commission accepts the opinions of John Martucci, P.E. that (1) the proposed outlet structure would enhance the wetlands function as a detention pond, (2) the system would address any increase in runoff and reduce the peak flow for a 25-year storm from 10.4 cfs to

7.6 cfs; (3) the outlet structure would not drain the wetlands and wetlands functions shall be maintained, and (4) minor flooding would be eliminated.

2. Impact to Wetlands and Watercourse

The Commission accepts the testimony from Mr. McDougal and Mr. Martucci that no significant impact is posed by the application, in conjunction with the implementation of the proposed sediment and erosion control plan and the wetlands planting plan.

3. Sediment and Erosion

The Commission recognizes that work activity within and adjacent to the wetlands could cause erosion and/or sedimentation, and has reviewed the applicants' proposed steps to prevent significant impact to the resources. The Commission has found that the proposal incorporates both short-term and long-term sediment and erosion controls into the development plan. Temporary controls will be utilized during construction and are proposed to be maintained during the stabilization period following work activity. Permanent controls include the installation ground cover within disturbed areas and planting within the two wetlands areas.

4. Review of Feasible and Prudent Alternatives

Within its review of the proposed subdivision, the Commission discussed the possibility of alternatives that may be available for the proposal. The Commission considered the locations of the building envelopes to be created by the subdivision, locations of possible driveway locations, and related site development activities. The Commission found that the proposed subdivision provides developable areas that would be outside regulated setback areas and preserves significantly trees.

The Commission considered alternatives for the proposed stormwater system, such as forgoing the installation of the structure at the outlet of the northern wetlands, the installation of a berm in lieu of the outlet structure, and the creation of a rain garden, and the direct connection to the State stormwater system instead of connecting to the existing catch basin located at the southeast lot corner. The Commission accepts the findings of Mr. Martucci that the stormwater system, as proposed, best addresses existing minor flooding conditions and mitigates the effects of proposed future impervious area, as well as maintenance concerns.

5. Wetland Plantings

The applicant has proposed the removal of debris and installation of wetlands plantings within the two wetland areas. The new plantings consist of native shrubs and trees, including Pin Oak, Clethera, Winterberry, Spicebush and Arrowwood. Further, the applicant has proposed the removal of the invasive species Japanese Knotweed and Asiatic Bittersweet from the wetlands and wetland setback area. Disturbed areas shall be treated with "New England Erosion Control/Restoration Mix" from New England Wetland Plants, Inc., or equivalent field grass and forbs seed mixture.

The Commission found that the invasive species of Multiflora Rose within the areas of the proposed plantings should be removed as well.

E. DECISION:

The Commission hereby approves the proposal with the following stipulations:

1. This is a conditional approval. Each and all of the conditions herein are an integral part of the Commission's decision.
2. Construction shall be in accordance with the plans submitted to and reviewed by the Commission, entitled "Subdivision Site Plan, Prepared for David Harris & Sabina Harris, 1749 Boston Post Road, Darien, Connecticut," Sheets 1 to 2, by John R. Martucci, P.E., dated July 14, 2003.
3. A fence may be installed as a screening and noise buffer from the Town pump station. The fence shall be constructed of cedar or other non-arsenic treated wood, or plastic/vinyl material. If the fence is to be painted, it shall be painted prior to installation in an area outside the regulated areas.
4. The work activity is limited to that which is approved. Prior to implementation, any possible revisions to the plans, including but not limited to extension of the approved drainage appurtenances or new landscaping activity, must be submitted to and reviewed by the Planning and Zoning Office to determine conformance to this approval, and may require an amendment approval by the Environmental Protection Commission. Any increase in the extent of regrading, development, disturbance or impacts within the wetlands or watercourse, or regulated area around the wetlands, or other significant amendments to the approved plan will require prior submission to and review by the entire Commission in accordance with Section 7.8 of the Inland Wetlands and Watercourses Regulations of the Town of Darien.
5. The "Environmental Planting Plan," Sheet 1 to 2, by Environmental Land Solutions, dated August 26, 2003, shall be implemented prior to the commencement of any other work activity on the site. The wetland planting plan is an integral part of this subdivision approval and therefore shall be completed within one year of the approval date. Plant substitutions shall be approved by Commission staff prior to planting. The wetland areas are to remain natural areas after to planting is completed; therefore, the use of detritus mulch is allowed for only the first growing season.
6. That a performance bond shall be posted with the Planning and Zoning Office to ensure that the wetland planting plan is completed according to the approved August 26, 2003 plan, and the compliance with this approval. The bond shall be based upon an estimate of plant and labor costs, including the removal of invasive species, to be submitted to the Commission by the permittee. Half of the amount shall be returned upon the completion of the planting activity. The remaining amount shall be held for three (3) growing seasons to ensure that the new plantings are established. Any diseased or dead plantings must be replaced. According

to Section 11.10 of the Town's Inland Wetland and Watercourses Regulations, a Zoning Permit shall not be issued until the bond is provided

7. All sediment and erosion controls shall be installed prior to the commencement of work activity as shown on the July 14, 2003 plans by John R. Martucci, P.E. The bottom of the silt fence shall be buried a minimum of 6-inches into the soil and shall be backfilled with suitable material. All controls must be inspected daily by the permittee or their representative. Any sagging, undermining, or damage to the silt fence or construction barrier must be repaired immediately.
8. Sediment and erosion controls shown on the plans shall be maintained throughout the construction process and shall only be removed when the disturbed areas have been adequately re-stabilized with suitable vegetation.
9. The ±8,750-square foot open space parcel created under the subdivision, shall be filed in the Darien Land Records with protective language to ensure the conservation and protection of the wetlands, to remain in perpetuity as undisturbed and natural. The deed restriction shall state that (a) all clearing, construction, filling, removal or deposits of materials and alteration of any kind, shall be prohibited within the open space area, unless otherwise permitted by the Environmental Protection Commission; and (b) use of the open space area shall be limited to passive recreation and wildlife habitat, with no construction activity allowed. A copy of the protective deed covenant shall be submitted to and reviewed by the Town Attorney and the Planning and Zoning Director prior to filing a mylar for the lot line adjustment in the Darien Land Records.
10. This permit does not relieve the applicant of their responsibility to comply with all other applicable rules, regulations, and codes of other Town agencies or other regulating agencies. In particular it is noted that approval of a lot line adjustment and fill permit from the Planning and Zoning Commission, variances from the Zoning Board of Appeals, approval from the Sewer Department and Zoning and Building Permits are needed before this project can proceed. In addition, approval by the Army Corps of Engineers may be required. A copy of these other permits and approvals shall be submitted to the EPC to complete the file.
11. The permittee shall notify the Environmental Protection Commission prior to commencement of excavation or regrading work and after the sediment and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and as per plan. All sediment and erosion control measures should be maintained until all disturbed areas are stabilized and revegetated.
12. The permittee shall notify the Environmental Protection Commission immediately upon commencement of work and upon its completion.
13. No equipment or material, including without limitation, fill, construction materials, debris, or other items shall be deposited, placed or stored in any wetland or watercourse on or off site unless specifically authorized by this permit.

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14. The duration of this permit shall be five years and shall expire on the date specified above. All proposed activities must be completed and all conditions of this permit must be met within one year from the commencement of the proposed activity.
15. This decision shall be filed in the Darien Land Records by the applicant prior to the commencement of work activity on either property.

The motion was made by Mr. Hillman, seconded by Ms. Miller and unanimously approved.

Chairman Hillman read the following agenda item:

Discussion and Possible Decision of EPC-78-2003, Edward Piorkowski, 152 Old Kings Highway North, proposing an addition to an existing residence, the construction of an inground pool, connection to the town sewer, regrading, construction of a rock wall, restoration of a wetlands area, and perform related site development activities within a regulated area. The property is located on the north side of Old Kings Highway North approximately 340 feet west of the intersection of Wakeman Road and Old Kings Highway North, shown on Tax Assessor's Map #32 as Lot #26.

TOWN OF DARIEN
ENVIRONMENTAL PROTECTION COMMISSION
PERMIT TO CONDUCT A REGULATED ACTIVITY

EFFECTIVE DATE: OCTOBER 1, 2003
EXPIRATION DATE: OCTOBER 1, 2008

Application Number:	EPC-78-2003
Applicant's Name and Address:	Edward Piorkowski 152 Old Kings Highway North Darien, CT 06820
Property Address of Proposed Activity:	152 Old Kings Highway North Darien, CT 06820
Name and Address of Applicant's Representative:	Michael Fishman Stearns & Wheeler, LLC 35 Corporate Drive, Suite 1000 Trumbull, CT 06611

Proposed Activity: An addition to an existing residence, construction of an inground pool with surrounding terrace, installation of new water line and sewer lateral, fill and regrading activity, construction of a stone retaining wall, enhancement/revegetation of a wetland area, including the removal of invasive species, and perform related site development activities within a regulated area

Shown on Tax Assessor's Map #32 as Lot #26.

The Environmental Protection Commission has considered the application with due regard to the matters enumerated in Section 21a-41 of the Connecticut General Statutes as amended and in accordance with Section 10 of the Inland Wetlands and Watercourse Regulations of the Town of Darien, and has found that a partial approval is in conformance with the purposes and provisions of said sections.

This authorization refers to the application to conduct regulated activities within and adjacent to inland wetlands within the Town of Darien. The Commission has conducted its review and findings on the bases that:

- In issuing this permit, the Commission has relied on the applicant's assurances, and makes no warranties and assumes no liability as to the structural integrity of the design or any structures, nor to the engineering feasibility or efficacy of such design.
- In evaluating this application, the Environmental Protection Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, after interested parties have had an opportunity to be heard at a duly noticed public hearing this permit shall be modified, suspended or revoked by the Commission.

The Environmental Protection Commission met for a general meeting on August 6, 2003 and moved that the application be scheduled for a public hearing. The Public Hearing was held on September 3, 2003 and September 17, 2003. The Commission opened the hearing on September 3, 2003 and tabled the application without discussion until the next hearing. During the Commission's September 17, 2003 hearing, the applicant's representatives presented information explaining the project and provided answers to concerns and questions raised by the Commission and Commission staff. No one from the general public participated in the public hearing, although invited to do so by the Commission.

Following careful review of the submitted application materials and related analysis, the Commission, all of whose members that participated in the deliberation are fully familiar with the site and its surroundings, finds:

A. PROJECT DESCRIPTION:

The application proposes an addition to an existing residence, the teardown the barn and rebuild of a barn/garage/guest and pool house, and installation of an inground swimming pool with surrounding terrace. The addition is proposed for a family room, master bedroom and one car bay. The proposed barn/garage/guest and pool house would be larger than the existing structure, closer to the wetlands, and would serve as a garage, storage area, pool house, and guest area. Water and sewer lines for the garage/guest house would be installed within the regulated area. Additional regulated activities include the placement of fill in the lawn to the north, west and south of the wetlands, and the enhancement of the wetland area, including the removal of invasive species and the replanting with native species. The fill

would be separated from the wetlands by a proposed stone retaining wall located 35' from the wetlands.

B. SITE DESCRIPTION:

The property is a ± 1.26 -acre flag-shaped parcel located on the north side of Old Kings Highway North, approximately 340' west of the intersection of Wakeman Road and Old Kings Highway North. It is shown on the Tax Assessor's Map #32 as Lot #26. The residential property is developed with a two-story single-family residence located in the southeast corner and a barn located in the northwest portion of the lot. The existing landscape, including both wetlands and uplands, is a mixture of lawn and garden with ornamental trees and shrubs. A wetlands pocket extends across the eastern lot line and is approximately 52' north of the existing residence. This wetland is dominated by a thick growth of Multiflora Rose and Raspberry bramble. A second pocket of wetlands is located on the south side of the "flag" portion of the lot, which is wooded. An area of ledge is located approximately 33' east of the existing barn.

The wetlands were flagged on April 18, 2002 by Otto Theall, Professional Soil Scientist. The flagging is consistent with and closely matches the boundary shown on the Town's wetland boundary map. The wetland soils consist of Ridgebury, Leicester and Whitman extremely stony fine sandy loam (Rn).

C. HEARING PRESENTATIONS AND RECORD:

The applicant and his representatives provided materials to the EPC as part of the record in this matter. These materials were presented and discussed during the General Meeting of August 6, 2003 and Public Hearing of September 17, 2003, and discussed during the Commission's deliberation on October 1, 2003:

1. Plan – "Figure 3, Proposed Conditions, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut," Sheet 2, by Stearns & Wheler, LLC, last revised 09/03, received during September 17, 2003 Public Hearing.
2. Plan – "Figure 3, Proposed Conditions, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut," Sheet 2, by Stearns & Wheler, LLC, last revised 08/03, received by Planning and Zoning Office on August 27, 2003.
3. Plan – "Figure 3, Proposed Conditions, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut," Sheet 2, by Stearns & Wheler, LLC, last revised 07/03, received by Planning and Zoning Office on July 30, 2003.
4. Plan – "Figure 3, Proposed Conditions, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut," Sheet 2, by Stearns & Wheler, LLC, dated 07/03, received by Planning and Zoning Office on September 16, 2003.

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5. Sediment & Erosion Control Plan – “Figure 4, Erosion Control Plan, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 3, by Stearns & Wheler, LLC, last revised 07/03, received by Planning and Zoning Office on July 30, 2003.
6. Sediment & Erosion Control Plan – “Figure 4, Erosion Control Plan, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 3, by Stearns & Wheler, LLC, dated 07/03, received by Planning and Zoning Office on September 16, 2003.
7. Existing Conditions Plan – “Figure 2, Existing Conditions, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut,” Sheet 1, by Stearns & Wheler, LLC, dated 07/03, received by Planning and Zoning Office on July 16, 2003.
8. Untitled Map, enlarged sectional photocopy of Tax Assessor’s Map #32, highlighting wetlands and proposed conservation easement area on Lot #26, owned by Edward Piorkowski, and an approved conservation easement on Lots #28A owned by Annette Miceli and #28B, owned by Dominick Miceli, undated, received during the September 17, 2003 Public Hearing.
9. Soils Report – “Soil Investigation Report, 152 Old Kings Highway North, Darien, Connecticut” by Soil & Wetland Science, LLC, dated April 18, 2002.
10. Environmental/Wetland Impact Review – “Report – Environmental and Wetland Impact Assessment for Proposed Filling, Construction, and Renovation, 152 Old Kings Highway North, Darien, Connecticut” by Stearns & Wheler, LLC, dated July 2003, received July 16, 2003.
11. Drainage Report – “Drainage Report, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut” by Stearns & Wheler, LLC, dated July 17, 2003.
12. Mailing List for 152 Old Kings Highway North, Neighbors within 100 Feet of Project Area, dated 7/15/2003, with map.
13. Letter to Michael Fishman, Stearns & Wheler, LLC, from Nancy H. Sarner, GIS Specialist/Planner, dated July 22, 2003, Re: Wetlands Permit Application #EPC-78-2003, Edward Piorkowski, 152 Old Kings Highway North.
14. Letter to Michael Fishman, Stearns & Wheler, LLC, from Nancy H. Sarner, GIS Specialist/Planner, dated August 12, 2003, Re: Wetlands Permit Application #EPC-78-2003, 152 Old Kings Highway North – Request for Additional Information, Notification to Adjacent Property Owners.
15. Letter to Nancy Sarner, GIS Specialist/Planner, from Michael Fishman, Stearns & Wheler, LLC, dated August 27, 2003, Re: Wetlands Permit Application #EPC-78-2003, 152 Old Kings Highway North, Response to Your Letter of August 12, 2003 Requesting Additional Information.

16. Memorandum to EPC Members from Nancy Saner, Environmental/GIS Analyst, Re: EPC-78-2003, Piorkowski Application, 152 Old Kings Hwy N, dated Wednesday, August 27, 2003.

D. ITEMS/ISSUES OF CONCERN TO THE COMMISSION:

1. Impact to Wetlands and Watercourse

The wetlands located on the Piorkowski property are part of a larger wetland system associated with Tokeneke Creek and impacted by residential development. Under its wetland review process, the Commission not only limits additional development impact to wetlands, but, whenever possible, seeks to improve existing conditions.

The Commission reviewed the proposed plan for the revegetation and enhancement of the wetland area. The Commission accepts the testimony and findings of Mr. Fishman that the biodiversity and habitat value of the wetlands would be increased by the proposed enhancement and revegetation of the wetland area, including the removal of invasive species. In addition, the Commission finds that the stone retaining wall and planted wetland buffer to surround the wetlands should reduce the likelihood that the area should be disturbed. The planted buffer should serve to filter out most herbicides, insecticides, and fertilizers used on the lawn area from stormwater runoff before it enters the wetlands, and should support a greater variety of beneficial insects and microorganisms. Nutrients dissolved in the runoff would be used by the plants and microorganisms, or incorporated into the soils of the buffer, which would protect the wetlands from nutrient overload and changes in the plant community.

The Commission finds that the establishment of the conservation easement, as proposed by the applicant, would maintain the long-term productivity of the existing wooded wetlands, and expand the protected natural area created by the establishment of a similar conservation easement area under Wetland Permit Approval #EPC-56-2000, located on Lots #28A and #28B on Wakeman Road.

The Commission appreciates the plan revisions provided by the applicant in an attempt to reduce impact and disturbance to the wetlands. The Commission finds that the location of the water and sewer line on the east side of the driveway should preserve trees located along the western property boundary. It finds that the second-floor balcony would maintain activity further away from the wetlands, and that the stone retaining wall would limit the amount of fill activity within the regulated area and serve to demarcate the wetland restoration area. The gravel driveway with grass median poses less impervious area than a paved driveway and provides needed access to the rear barn/garage/guest and pool house. However, it finds that the pool, as proposed, does not meet the requirements of the Town's Inland Wetlands and Watercourses Regulations, in that the pool proposes a new intense use adjacent to the wetlands, introduces the risk of the use of chemicals adjacent to wetlands for the treatment of the pool water and the cleaning of the pool structure, and limits the amount of protective setback.

2. Review of Necessity, or Hardship

The Commission has reviewed the regulated activities proposed by the application. In doing so, the Commission has considered the applicant's basic goal, which was presented as the improvement and partial redevelopment of the property. In order to balance the owner's property rights with the need to protect the Town's wetland resources, the Commission considered the issue of luxury versus necessity, as it relates to the reasonable use of a property. The Commission felt that granting permission for the residential addition, sewer and water lines to the reconstructed barn/garage/guest and pool house, improvement of the existing driveway, and related grading and fill activities constituted reasonable, expected and necessary uses associated with a residence, and posed acceptable disturbances and impact to the wetlands.

In contrast, the Commission concluded that a new inground swimming pool with pool patio and use of the barn in part as a pool house would significantly impact the regulated area. While many would consider having a swimming pool to be desirable, a pool is a luxury. It is quite nice to have. But it is not a necessity, not in the sense that a larger, needed living and cooking space for example, can be. Where it is proposed that intrusion be made to regulated area for a luxury as opposed to a habitation use that is reasonable, expected and necessary, the Commission must apply heightened scrutiny. The pool and pool patio would be located 42' and 37' from the wetlands, respectively, and would total approximately 700 square feet of intrusion upon the regulated area.

The Commission accepts the testimony of the property owner that useable land on the property is limited due to the amount and location of ledge and wetland areas. It is understood that development potential on such restricted properties is limited due to the need for wetlands protection, when compared with properties of equal size that lack these site constraints. After careful consideration, the Commission finds that, however, the applicant did not adequately address Commission concerns regarding "hardship" to justify the proposed inground pool's impact to the wetlands, especially considering that alternatives to the proposal are available. The Commission finds that in denying the proposed pool, it would not take away the property owner's reasonable use of the property.

3. Review of Feasible and Prudent Alternatives

The Commission appreciates the plan revisions provided by the applicant in an attempt to reduce impact and disturbance to the wetlands. Under the plan revisions, the amount of fill and regrading activity has been reduced, the stone retaining wall, pool and terrace have been moved further away from the wetlands, a conservation easement has been proposed, and the planted buffer area around the wetlands has been widened.

The Commission has reviewed the regulated activities proposed by the application. In doing so, the Commission has considered the applicant's basic goal, which was presented as the improvement and partial redevelopment of the property, and considered alternatives to the proposal in light of the goal. Pursuant to the State Inland Wetland and Watercourses Act and the Town's Inland Wetlands and Watercourses Regulations, the Commission cannot issue a

permit for a regulated activity that receives a public hearing unless it finds that a feasible and prudent alternative does not exist.

The Commission finds that prudent and feasible alternatives are available to the applicant for the proposed pool. Alternatives may include, but may not be limited to:

- a. Application to the Zoning Board of Appeals to seek a setback variance(s) to place the reconstructed barn/garage/guest and pool house within the zoning setback(s) in order to pull the inground pool further away from the wetlands;
- b. Reduction in the size of the barn/garage/guest and pool house, which would allow the pool to be pulled further away from the wetlands;
- c. Eliminating the proposed screened porch from the barn/garage/guest and pool house construction, which would allow the pool to be pulled further away from the wetlands.
- d. Constructing a smaller pool terrace.
- e. No construction – omitting the inground pool and terrace from the proposed site design.

4. Sediment and Erosion

The Commission recognizes that work activity within and adjacent to the wetlands could cause erosion and/or sedimentation, and has reviewed the applicants' proposed steps to prevent significant impact to the resources. The Commission has found that the proposal incorporates both short-term and long-term sediment and erosion controls into the development plan. Temporary controls will be utilized during construction and are proposed to be maintained during the stabilization period following work activity. Permanent controls include the construction of a stone retaining wall and the installation of plantings within the wetlands and buffer area.

E. DECISION:

The Commission hereby approves in part and denies in part Wetlands Permit Application #EPC-78-2003, the following stipulations:

1. This is a conditional approval. Each and all of the conditions herein are an integral part of the Commission's decision.
2. That the Commission approves the residential addition, driveway improvements, fill and regrading activity, installation of sewer and water lines, reconstruction of the garage/guest house, wetland enhancement/replanting including the removal of invasive species, construction of a stone retaining wall, and creation of a conservation easement area. Construction shall be in accordance with the plans submitted to and reviewed by the Commission, entitled "Figure 3, Proposed Conditions, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut," Sheet 2, by Stearns & Wheler, LLC, last revised 09/03, received during September 17, 2003 Public Hearing, as modified by this resolution.

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3. Construction shall occur in accord with construction sequence listed on the approved plan "Figure 3, Proposed Conditions" by Stearns & Wheeler, received during the September 17, 2003 Public Hearing.
4. That the Commission denies the construction of the inground pool and surrounding terrace area based upon their finding that: (a) a pool with terrace is not a necessity; (b) this proposed pool/terrace presents a significant impact to the regulated area, and (c) prudent and feasible alternatives are available to eliminate or more fully mitigate such impact.
5. That the wetlands enhancement/planting be installed as shown on the plan by Stearns & Wheeler, LLC, entitled "Figure 3, Proposed Conditions," Sheet 2, dated 09/03, received during the September 17, 2003 Public Hearing. The wetland restoration and enhancement is an integral part of the approval and therefore must be completed prior to the filing for a Certificate of Occupancy. Plant substitutions shall be approved by Commission staff prior to planting. The wetland areas are to remain natural areas after to planting is completed; therefore, the use of detritus mulch is allowed for only the first growing season.
6. That a performance bond shall be posted with the Planning and Zoning Office to ensure that the wetland enhancement and planting plan is completed according to the above mentioned approved plan, and the compliance with this approval. The bond shall be based upon an estimate of plant and labor costs, including the removal of invasive species, to be submitted to the Commission by the permittee. Half of the amount shall be returned upon the completion of the restoration activity. The remaining amount shall be held for three (3) growing seasons to ensure that the new plantings are established. Any diseased or dead plantings must be replaced. According to Section 11.10 of the Town's Inland Wetland and Watercourses Regulations, a Zoning Permit shall not be issued until the bond is provided.
7. That a Conservation Easement from the property owners to the Land Trust of Darien or the Town of Darien Environmental Protection Commission shall be filed in the Darien Land Records, which shall designate an approximately 13,690 square foot area located in the northeastern portion of the site and shown on plan entitled "Figure 3, Proposed Conditions," Sheet 2, received during the September 17, 2003 Public Hearing, to remain in perpetuity as undisturbed and natural. The deed restriction shall state that (a) all clearing, construction, filling, removal or deposits of materials and alteration of any kind, shall be prohibited within the conservation easement area, unless otherwise permitted by the Environmental Protection Commission; and (b) use of the conservation easement area shall be limited to passive recreation and wildlife habitat, with no construction activity allowed. A copy of the conservation easement shall be submitted to and reviewed by the Town Attorney and the Planning and Zoning Director prior to filing a mylar for the lot line adjustment in the Darien Land Records. The Conservation Easement is an integral part of the approval and therefore must be filed with map in the Darien Land Record prior to the filing for a Certificate of Occupancy.
8. The work activity is limited to that which is approved. Prior to implementation, any possible revisions to the plans must be submitted to and reviewed by the Planning and Zoning Office to determine conformance to this approval, and may require an amendment approval by the Environmental Protection Commission. Any increase in the extent of regrading,

development, disturbance or impacts within the wetlands or watercourse, or regulated area around the wetlands, or other significant amendments to the approved plan will require prior submission to and review by the entire Commission in accordance with Section 7.8 of the Inland Wetlands and Watercourses Regulations of the Town of Darien.

9. All sediment and erosion controls shall be installed prior to the commencement of work activity as shown on the plan to be modified to reflect this approval, entitled "Figure 4, Erosion Control Plan, Piorkowski Residence, 152 Old Kings Highway North, Darien, Connecticut," Sheet 3, by Stearns & Wheeler, LLC, dated 07/03, received by Planning and Zoning Office on September 16, 2003. The bottom of the silt fence shall be buried a minimum of 6-inches into the soil and shall be backfilled with suitable material. All controls must be inspected daily by the permittee or their representative. Any sagging, undermining, or damage to the silt fence or construction barrier must be repaired immediately
10. Sediment and erosion controls shown on the plans shall be maintained throughout the construction process and shall only be removed when the disturbed areas have been adequately re-stabilized with suitable vegetation.
11. All equipment and storage of materials during construction shall be maintained outside the regulated areas, to ensure that the wetlands on the eastern portion of the site will be undisturbed.
12. This permit does not relieve the applicant of their responsibility to comply with all other applicable rules, regulations, and codes of other Town agencies or other regulating agencies. In particular it is noted that approval of a lot line adjustment and fill permit from the Planning and Zoning Commission, variances from the Zoning Board of Appeals, approval from the Sewer Department and Zoning and Building Permits are needed before this project can proceed. In addition, approval by the Army Corps of Engineers may be required. A copy of these other permits and approvals shall be submitted to the EPC to complete the file.
13. The permittee shall notify the Environmental Protection Commission prior to commencement of excavation or regrading work and after the sediment and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and as per plan. All sediment and erosion control measures should be maintained until all disturbed areas are stabilized and revegetated.
14. The permittee shall notify the Environmental Protection Commission immediately upon commencement of work and upon its completion.
15. No equipment or material, including without limitation, fill, construction materials, debris, or other items shall be deposited, placed or stored in any wetland or watercourse on or off site unless specifically authorized by this permit.
16. The duration of this permit shall be five (5) years and shall expire on the date specified above. All proposed activities must be completed and all conditions of this permit must be met within one year from the commencement of the proposed activity.

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17. This decision shall be filed in the Darien Land Records by the applicant prior to the commencement of work activity on either property.

The motion was made by Mr. Hillman, seconded by Ms. Miller and unanimously approved.

Adjournment: Having no further business to attend to, the Commission adjourned the October 1, 2003 meeting at 11:30 p.m.

Respectfully submitted,

Nancy H. Sarner
Environmental/GIS Analyst